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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX  
APPELLATE DIVISION

In the Matter of the Legitimation  
of Beatrice A. Nielsen Tyler,  
  
Beatrice A. Nielsen Tyler,  
  
Appellant,  
  
v.  
  
Louis Armstrong, As Administrator  
of the Estate of Felix Francis,  
  
Appellee.

On Appeal from the Territorial Court of the Virgin Islands  
 Considered: July 26, 2001  
 Filed: September 25, 2002

**BEFORE:**      **THOMAS K. MOORE**, District Judge, District Court of the Virgin Islands; **STANLEY S. BROTMAN**, Senior Judge of the United States District Court for the District of New Jersey, Sitting by Designation, and **BRENDA J. HOLLAR**, Judge of the Territorial Court, Division of St. Thomas, Sitting by Designation.

**ATTORNEYS:**  
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 St. Croix, VI  
*Attorney for Appellant.*

**Rhonda Hospedales, Esq.**  
Nichols Newman Logan & D'Eramo, P.C.  
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*Attorney for Appellee.*

# MEMORANDUM OPINION

**PER CURIAM**

**I. FACTUAL AND PROCEDURAL BACKGROUND**

This appeal involves the effort of Beatrice Nielsen Tyler ["Tyler"] to have the Family Division of the Territorial Court, pursuant to her "Petition for Legitimization by Acknowledgment," declare her to be the legitimate daughter of Felix A. Francis ["Francis"], who died intestate on December 21, 1999. *See In the Matter of the Paternity and Legitimization by Acknowledgment of: Beatrice Alexandria Nielsen Tyler*, Terr. Ct. Fam. No. L1/2000 (Terr. Ct. St. Croix Div.) (provided in App. at 7.). Tyler, born on September 28, 1947, claimed to be the illegitimate daughter of Francis and Alice Smith Nielsen. Tyler maintains that her mother had an affair with Francis while she was legally married to Heinrich Nielsen. Louis Armstrong ["Armstrong"], as the administrator of the estate of Felix A. Francis, moved to dismiss Tyler's petition for legitimation.<sup>1</sup>

By order dated July 14, 2000, the Family Division of the Territorial Court granted the administrator's motion to dismiss

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<sup>1</sup> Francis died intestate on December 21, 1999. In January, 2000, Louis Armstrong, the adult stepson of Francis, acting as administrator of the estate, filed a petition for probate and issuance of letters testamentary in the Territorial Court. *See In the Matter of the Estate of Felix A. Francis*, Terr. Ct. Prob. No. 7/2000 (Terr. Ct. St. Croix Div.). In May 2000, Tyler filed a Notice of Claim of Heirship as Daughter of Felix A. Francis, Decedent, in the probate matter. (See App. at 2.) The probate and claim of heirship matter is still pending before the Territorial Court and is not the subject of this appeal.

Tyler's petition. (App. at 38-42.) Although the trial judge found that Tyler made a "series of allegations, that, *if proven*, could support her claim that [Francis] had acknowledged her as his child while he was alive," the judge could not consider Tyler's petition because only the mother, father, or a legal custodian of a child under the age of eighteen may move for legitimation by acknowledgment under the recently adopted provisions of Title 16 of the Virgin Islands Code governing the establishment of paternity. (*Id.* at 41.) The judge held that Tyler, as an adult child, lacked standing to bring a claim for paternity under Title 16. Tyler timely appealed the Family Division's ruling.

## **II. DISCUSSION**

The Appellate Division has jurisdiction over this appeal pursuant to 4 V.I.C. § 33 and 5 V.I.C. § 1423. The Court will uphold the trial court's findings of fact unless they are clearly erroneous; questions of law are subject to plenary review. *Id.*; *Stallworth Timber Co. v. Triad Bldg. Supply*, 37 V.I. 49, 52, 968 F. Supp. 278, 281 (D.V.I. App. Div. 1997); *Nibbs v. Roberts*, 31 V.I. 196, 204 (D.V.I. App. Div. 1995); *Government Employees Ret. Sys. v. Hill*, 866 F. Supp. 880, 882 (D.V.I. App. Div. 1994).

On May 5, 1998, the Virgin Islands replaced the chapter of

Title 16 governing paternity and how it may be established. (See Act of May 5, 1998, No. 6228, § 4, Sess. L. 1998, at 252 (repealing former chapter 11 of Title 16, sections 291-303, and replacing it with new chapter 11, sections 291-98).) Although newly enacted section 295<sup>2</sup> continues to allow for legitimation by acknowledgment in instances where the putative father is deceased when proceedings are commenced, such a proceeding must be brought before the child's eighteenth birthday and may be instituted on behalf of an out-of-wedlock child only by the mother, father who wishes to assert paternity, or any legal custodian. See 16 V.I.C. § 293(a). Since Tyler was a fifty-three year old adult when she petitioned the court to establish her paternity, the trial judge correctly held that Tyler has no standing to bring an action under section 295.

Tyler attempts to assert that the application of the newly enacted section 295 to her petition amounts "to [the] wrongful taking and deprivation of her vested inheritance rights" in violation of her due process rights and that the court must instead apply the repealed 16 V.I.C. § 462. (*Id.* at 7, 11.)

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<sup>2</sup> The new section provides that

(a) The deceased father of a child born out-of-wedlock, by having publicly acknowledged the child as his own, or having received the child into his family and otherwise having treated it as if it were a legitimate child, thereby provides evidence of paternity.

Tyler offers no case law or other authority in support of her claim, because it is totally without merit. The changes made to Title 16 of the Virgin Islands Code in 1998 have no bearing on whatever inheritance rights Tyler may claim to have against the estate of her alleged biological father, Felix A. Francis. Indeed, Tyler's claim of heirship is currently pending in the separate probate proceeding, which is not before us. See *In the Matter of the Estate of Felix A. Francis*, Terr. Ct. Prob. No. 7/2000 (Terr. Ct. St. Croix Div.).<sup>3</sup>

### **III. CONCLUSION**

The Territorial Court correctly applied 16 V.I.C. § 291-98 to Tyler's petition for legitimation by acknowledgment. Tyler lacks the standing to pursue her allegations under the law as it was amended and revised in May, 1998. An appropriate order is attached.

**ENTERED this 25th day of September, 2002.**

**ATTEST:**

**WILFREDO F. MORALES**  
**Clerk of the Court**

**By: \_\_\_\_\_/s/\_\_\_\_\_  
Deputy Clerk**

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<sup>3</sup> An illegitimate child's right to share in the property of her putative father's estate is governed by 15 V.I.C. § 84(13). Whether Tyler is estopped from claiming that she is Francis' daughter must be determined in the probate of that estate. Neither of these issues is before us. See 19 V.I.C. § 833(a).

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**Rhonda Hospedales, Esq.**  
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St. Croix, VI  
*Attorney for Appellee.*

**ORDER**

**PER CURIAM**

For the reasons set forth in the accompanying memorandum  
opinion of even date, it is hereby

**ORDERED** that the July 14, 2000, order of the Territorial  
Court is **AFFIRMED**.

**ENTERED** this 25th day of September, 2002.

**ATTEST:**

**WILFREDO F. MORALES**  
Clerk of the Court

By: \_\_\_\_\_/s/\_\_\_\_\_  
Deputy Clerk

**Copies to:**

Judges of the Appellate Panel  
Judges of the Territorial Court  
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